IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
COMPANY PETITION NO.726 OF 2006

In the matter of Madhuban Merchandise Private Limited

Reliance Infocom Infrastructure Pvt. Ltd. .. Petitioner.

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Mr. E.P. Bharucha, Senior Advocate i/b Mulla & Mulla for the Petitioner.
Mr. Milind Sathe, Senior Advocate with Mr. A.S. Doctor i/b Junnarkar & Associates for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

23rd March, 2007.

P.C. :

1. The Company Petition is founded on the averment that between July 2000 and November 2000 the Petitioner lent and advanced to the company an amount of Rs.2,33,85,20,000/- of which an amount aggregating to Rs.1,75,83,00,000/- was repaid by the company to the Petitioner. Hence the claim is that on the date of the institution of the Petition for winding up an amount of Rs.58,02,20,000/- was due and payable to the Petitioner towards the balance of the principal amount of the loan. Statutory notices under Section 434 of the Companies Act, 1956 were followed by the institution of a company petition for winding up. An affidavit in

reply has been filed to the proceedings.

2. The Company Petition, when it was instituted before the Court, was founded exclusively on Exhibit B to the Petition which is an extract of the ledger pertaining to the company maintained in the books of accounts of the Petitioner for the period between 1st April, 2000 to 16th August, 2006.

3. In the affidavit in reply that has been filed on behalf of the company on 19th January, 2007 it has been stated that until 9th August, 2005 the entire capital of the company was held by the Petitioner. The company was therefore a wholly owned subsidiary of the Petitioner. On 9th August, 2005 the Petitioner transferred the entire holding in the company to Saumya Finance and Leasing Company Pvt. Limited consequent upon which the company ceased to be a subsidiary of the Petitioner. The extract from the ledger annexed to the Company Petition shows that an amount of Rs. 100 Crores was paid by the company to the Petitioner on 9th August, 2005 while another amount of Rs.50 crores was paid on 17th November, 2005. There is no dispute that at the material time the company was a holder of shares in Reliance Industries Limited.

On 5th August, 2005 Reliance Industries Limited announced the decision of its Board of Directors to demerge certain businesses into four separate companies viz. the resulting companies through a scheme of arrangement. The shareholders of Reliance Industries Limited were to receive shares in each of the resulting companies, on the sanctioning of the scheme by this Court. The defence of the company is that at the time when it ceased to be a subsidiary, it was agreed and understood that all the shares of the resulting companies which the company would receive would be transferred to entities constituting the Anil Ambani Group as nominated by the Petitioner. It has also been set out that it was agreed that in lieu of such shares and payment of certain additional amounts, all outstanding payments would stand set off and settled. Based on such agreement and understanding, it has been stated that the company repaid to the petitioner an amount of Rs.100 Crores on 9th August, 2005 and Rs.50 Crores on 17th November, 2005. Thereafter upon the scheme being sanctioned by this Court the company was allotted 2,43,50,000 equity shares of each of the four resulting companies (Reliance Energy Ventures Limited, Reliance Capital Ventures Limited, Reliance Communication Ventures Limited and Reliance Natural Resources

Limited). These equity shares were transferred to entities constituting the Anil Ambani Group on 6th February, 2006 by which point of time the market value of these shares were collectively valued at over Rs.900 Crores at the point of listing in February and March 2006.

4. A further affidavit has been filed on behalf of the company in which it has been stated that on demerger of Reliance Industries Limited, 2,43,50,000 equity shares each of the four resulting companies which went to the Anil Ambani Group came to be transferred on 6th February, 2006 by persons who were nominees of that Group to companies and entities of the said Group. The names of those companies have been set out.

5. On behalf of the Petitioner it has been submitted that subsequent to the filing of the Company Petition, the Petitioner obtained a copy of the audited balance sheet of the company as of 31st March, 2005 which shows that an amount of Rs.2,08,02,20,000/-was due and payable to the Petitioner. Therefore, it has been urged that after giving due credit for the amount of Rs.150 Crores which was paid on 9th August, 2005 and

17th November, 2005 an amount of Rs.58 Crores was still due in balance by the Respondent to the Petitioner.

6. The Petition as it was originally instituted before the Court is entirely based on an extract from the ledger maintained by the Petitioner. Now it is a settled principle of law that under Section 34 of the Evidence Act entries in books of account, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to enquire, but such statement shall not alone be sufficient evidence to charge any person with liability. In the judgment in **Chandradhar Goswami v. Gauhati Bank Ltd.**[1], the Supreme Court elucidated the principle which emerges from Section 34 thus :

> "It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them."

7. The same view was reiterated in **Central Bureau of**

1 AIR 1967 SC 1058.

Investigation v. V.C. Shukla[2], where the Supreme Court following the earlier decisions reiterated that entries in books of account though relevant, are only corroborative evidence and it is to be shown further by some independent evidence that the entries represent honest and real transactions and that monies were paid in accordance with those entries.

8. Therefore, ex facie, the Company Petition as it was instituted could not be founded exclusively on the ledger maintained by the Petitioner since it is not the case of the Petitioner in the Company Petition that the extract from the accounts was confirmed by the company to be correct. Until that was done, there would be no debt due and payable. The Petitioner, however, relies upon the statement contained in the balance-sheet of the Respondent to the effect that an amount of Rs.208 Crores approximately was due and payable to the Petitioner as of 31st March, 2005. This, however, must be considered in the backdrop of the defence of the company that until 9th August, 2005, the company was a wholly owned subsidiary of the Petitioner. On 9th August, 2005 the company ceased to be a subsidiary of the

2 (1998) 3 SCC 410.

Petitioner on which date an amount of Rs.100 Crores was admittedly paid to the Petitioner. A further amount of Rs.50 Crores was paid to the Petitioner on 17th November, 2005. A demerger took place, the Court is informed, in December 2005 and the company which held shares in Reliance Industries Limited was entitled to shares in the four demerged companies. The company was allotted those shares and from the affidavit in reply it emerges that the shares were transferred on or about 6th February, 2006 to the Anil Ambani Group as a part of an over all scheme of settlement.

9. Having perused the defence, it cannot be said that a debt or an ascertained sum of money is due and payable by the Respondent to the Petitioner. The defence raises triable issues. Significantly in the affidavit in rejoinder that has been filed on behalf of the Petitioner on 9th February, 2007, the contents of paragraph 3(h) of the affidavit in reply have not been comprehensively addressed. The following observations contained in the judgment of the Supreme Court in **Mediquip Systems (P) Ltd. v. Proxima Medical System GMBH**[3] must

3 (2005) 7 SCC 42.

therefore apply to the situation as it obtains in the present case :

> "This Court in a catena of decisions has held that an order under Section 433(e) of the Companies Act is discretionary. There must be a debt due and the company must be unable to pay the same. A debt under this section must be a determined or a definite sum of money payable immediately or at a future date and that the inability referred to in the expression "unable to pay its debts" in Section 433(e) of the Companies Act should be taken in the commercial sense and that the machinery for winding up will not be allowed to be utilised merely as a means for realising debts due from a company."

10. In these circumstances, it would be appropriate and proper that the Petitioner is relegated to the remedy of instituting a suit for the recovery of its alleged dues. For the purposes of a Petition for winding up it cannot be held that there is an ascertained sum which is due and payable. Should a suit be instituted, it would only be necessary for the Court to clarify that the observations in this order are confined to the question as to whether a case for winding up of the company has been made out. The Petition is accordingly dismissed.